IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

NO. 295

CLOVERLEAF BUTTER COMPANY, a Corporation,
Petitioner (Claimant-Appellee Below),

VS.

UNITED STATES OF AMERICA,
Respondent (Appellant Below).

BRIEF FOR PETITIONER ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IMPORTANCE OF THE QUESTION PRESENTED

The question presented is, in short, whether or not the Federal Food, Drug and Cosmetic Act, as construed by the Courts, has nullified the Special Renovated Butter Act of May 9th, 1902, (Chapter 784, 32 Stat. at large, 196, Int. Rev. Code Section 2320 to 2326, particularly Sec. 2325).

It is a recognized fact, and admitted by the Court below, that most of the country or packing stock butter, when acquired by the processor, is not suitable for food in its then condition; otherwise there would be no occasion for renovation. The renovated butter industry uses such stock as raw material from which to extract the butter oil; this salvage process eliminates the impurities; but the application to this industry of the Food, Drug and Cosmetic Act, as

construed, would subject practically all of the packing stock or raw material to seizure and condemnation before it had been, or could be processed; and even before it had reached the processing plant or had been inspected by the officers or agents of the factory or by the Secretary of Agriculture, or even after such inspection.

If the Food, Drug and Cosmetic Act, as construed, is held applicable to the raw material in the process of renovation; then in that event, none of the packing stock butter could be processed except by the method provided in the Food, Drug and Cosmetic Act after seizure and condemnation under court order, and under the superivision of the Administrator of that Act, to the exclusion of the Secretary of Agriculture, and at the expense of the claimant or owner.

The Process Butter Industry could not possibly survive under such procedure; the effect of such construction of the statutes is to put the industry directly under the administration of the Federal Courts.

The Court below well recognizes this situation with which the industry is confronted, but says:

> "But these considerations are for Congress, and if Congress had intended to take packing stock butter out of the Food and Drug Act, it could very easily have done so either by amending the statutory definition of food to exclude materials that go into the finished product or by expressly excluding from the Act ingredients of renovated butter."

The Petitioner here contends that the Special renovated Butter Act of 1902, covering the specific subject matter and providing in every detail for its administration, controls the Renovated Butter Industry; and that the Secretary of Agriculture had the power and authority and it was his duty to inspect and determine the suitability of the raw material to be used in the manufacture of Renovated But-

ter; and that the test of suitability is the condition of the finished product.

This question has not been settled by this Court. It involves the life of the Renovated Butter Industry which is and has been successfully operated under the said Act of Congress, and under Federal Licenses, and under the supervision of the Secretary of Agriculture, and the regulations prescribed by him, for nearly a half century.

This is a matter of great importance to the industry, to the thousands of small producers throughout the Southeast, and to the general public at large. The opinion of the Court below would, in effect, destroy the authority theretofore committed to the Secretary of Agriculture by the Congress and insofar as the Renovated Butter Industry is concerned would virtually commit the entire control of the same to the Administrator of the Pure Food, Drug and Cosmetic Act, or his agents, without any authority or discretion whatsoever to do aught but seize and condemn all of the raw materials used in the manufacture of processed butter before such manufacture has been begun or could be completed.

POINTS OF LAW

POINT A.

The Circuit Court of Appeals for the Fifth Circuit decided an important question of Federal law with respect to the applicability of the Federal Food, Drug and Cosmetic Act to packing stock butter transported and held by Petitioner for the sole and exclusive purpose of manufacturing same into process or renovated butter under the provisions of the Renovated Butter Act and Regulations promulgated thereunder which has not been, but should be, settled by this Court.

POINT B.

The Circuit Court of Appeals for the Fifth Circuit has decided a Federal question in a way probably in conflict with applicable decisions of this Court with respect to construction of statutes as declared in many cases.

Sorrells vs. United States, 287 U. S. 435;

Anderson vs. Pacific Coast Steamship Co., 225 U. S., 187;

Leavenworth L. G. & R. Co. vs. United States, 92 U. S. 733;

Missouri K. & T. R. R. Co. vs. United States, 92 U. S. 760.

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Ex Parte, Crow Dog, 109 U. S. 556;

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50. Am. Jur. Pages 354, Section 354, Page 366, Sec. 362; Page 565, Sec. 564.

POINT A.

1. The Renovated Butter Act, May 9th, 1902, 32 Stat. 194, 197, I.R.C. 2320-2327, amended August 10th, 1912, Chapter 284, 37 Stat. 273, was adopted after great deliberation and full discussion of its purpose and of the nature of the materials entering into the manufacture of process and renovated butter and was intended by Congress to be a Special Act regulating that industry.

> Congressional Record, 57 Congress, Pages 1352, 1622, 1658, 3192, 3278-9, 3316, 3454, 3504, 3607, 3610, 3611, 4585-7.
>
> Senate Committee on Agriculture and Forrestry, hearing February 17th, 1902, Pages 4, 5, 6, 7, 8, 9, 49, 50, 51, 52 and 53.

2. Under the Renovated Butter Act (I.R.C. Section 2325) the Secretary of Agriculture is authorized and required to cause a rigid sanitary inspection to be made at such times as he may deem proper or necessary of all factories and storehouses where process or renovated butter is manufactured, packed or prepared for market and of the products thereof and materials going into the manufacture of the same. All process or renovated butter shall be marked with the words, "renovated butter" or "process butter". The Secretary of Agriculture shall make all needful regulations for carrying this Section and Sections 2326 (c) and 2327 (b) into effect and shall cause to be ascertained and reported from time to time the quantity and quality of process or renovated butter manufactured and the character and condition of the material from which it is made. *And he shall also have power to ascertain whether or not materials used in the manufacture of said process or renovated butter and deleterious to health or unwholesome in the finished product* and in case such deleterious or unwholesome materials are found to be used in product in-

tended for exportation or shipment into other States or in course of exportation or shipment *he shall have power to confiscate the same.*

3. The production of renovated butter is taxed and regulated by the Renovated Butter Act and by such regulatory provisions the entire process of manufacture is subject to the supervision of the Secretary of Agriculture.

Cloverleaf Butter Co. v. Patterson, 315 U.S. 148.

4. The manufacture and distribution in interstate and foreign commerce of process or renovated butter is a substantial industry. Its wholesome and successful functioning touches farm producers and City consumers. Science made possible the utilization of large quantities of packing stock butter which fell below the standards of public demand and *Congress undertook to regulate the production in order that the resulting commodity might be free of ingredients deleterious to health.*

Cloverleaf Butter Co. v. Patterson, Supra.

5. Inspection of the factory and of the material was provided for explicity. Confiscation of the finished product was authorized upon a finding of its unsuitability for food throughout the use of unhealthful or unwholesome materials. A finding that might be based upon visual or delicate laboratory test or upon observation of the use of such material in the process of manufacture.

Cloverleaf Butter Co. v. Patterson, Supra.

6. By the Statutes and Regulations the *Department of Agriculture* has authority to watch the consumers' interest throughout the process of manufacture and distribution. It sees to the sanitation of the factories in such minutiae

as the clean hands of the employees and the elimination of objectionable odors, inspects the materials used, including air for aerating the oils and confiscates the finished product when materials which would be unwholesome, if utilized, are present after manufacture.

Cloverleaf Butter Co. v. Patterson, Supra.

7. Congress hardly intended the intrusion of another authority during the very preparation of a commodity subject to the surveillance and comprehensive specifications of the *Department of Agriculture.*

Cloverleaf Butter Co. v. Patterson, Supra.

8. Whether the sanction used to enforce the Regulation is condemnation of the material or the product is not significant.

Cloverleaf Butter Co. v. Patterson, Supra.

ARGUMENT

The Renovated Butter Act was enacted by Congress in 1902, amended in 1912, and readopted as a part of the Internal Revenue Code in 1939.

It is a special enactment relating to this particular industry; and fully covers and regulates the subject matter.

It was adopted to remedy the condition existing at the time, fully recognized by Congress as shown by testimony and discussions before the Committees and debates on the floors of both houses.

The attention of Congress was directed particularly to the need of sanitary inspection and regulations of the industry and the materials entering into the manufactured product, as well as the methods employed.

Prior to the passage of the Act renovated butter plants were numerous—each a law unto itself as to sanitation.

Naturally there were many abuses. The renovated butter industry supplies a market for country butter which would otherwise be lost and offers a wholesome product to the consumer cheaper than creamery butter and sold for what it is, properly labelled.

In order to ascertain the intent of Congress:

> "Among the matters which have been regarded as properly considered, are the nature of the several Acts involved, the history of such Acts, the State of law when they were passed, the history of the times, or the facts and circumstances surrounding their enactment, as well as the language and respective titles thereof, the consequence of one construction or the other and the objects and purposes sought to be attained."
>
> 50 Am. Jur. 542, Section 537 and Notes.

The first Federal Food and Drug Act was adopted June 30th, 1906 (Chapter 3915, 34 Stat. 768).

The present Federal Food and Drug Act was adopted June 25th, 1938 (Chapter 675, 52 Stat. 1040).

The Renovated Butter Act was considered by this Court in the case of Cloverleaf Butter Company vs. Patterson, 315 U. S. 148, 62 S. Ct. 491, which was a case brought by this Petitioner to enjoin seizures of raw materials—packing stock butter—by Patterson as Commissioner of Agriculture and industries of the State of Alabama under the State Pure Food and Drug Act and involved the question as to whether or not by the adoption of the Renovated Butter Act Congress had preempted and fully occupied the field with respect to the manufacture of process or renovated butter. No other question was presented by the pleadings.

The majority opinion held that the Renovated Butter Act precluded the State authorities from seizure of raw material intended for use in the manufacture or process or renovated butter in interstate commerce.

In the foregoing points we have referred to certain excerpts from the majority opinion in the Patterson case, which in our judgment are controlling here; and the decision of the Court of Appeals for the Fifth Circuit is in conflict with the same or has misconstrued or misapplied the same.

We agree with the opinion of the Court of Appeals where it holds that it was not the intention of Congress to leave packing stock butter manufacturers completely free to use in making their completed products any kind of filthy and putrid materials they choose to use in the faith, the substance of things hoped for, the evidence of things not seen, that, in homely phrase, it will all come out in the wash.

We further agree that there should be inspection of the material and the finished product.

However, we submit that the Court of Appeals is in error in holding that standards and procedure of the Federal Food, Drug and Cosmetic Act must be applied to the renovated butter industry, during the process of manufacture.

It is our contention that the inspection of the raw material as well as all the processes of manufacture of process or renovated butter is regulated by the Renovated Butter Act and is placed under the supervision of the Secretary of Agriculture.

The point is very material for the reason that under the Federal Food, Drug and Cosmetic Act, as construed, the standard is whether the material is fit for use in its present condition.

The standard under the Renovated Butter Act is whether the raw butter is in such condition as that it can be made into a wholesome product which is not deleterious to health.

In other words, it is a question of approach of the two Statutes.

United States Circuit Court of Appeals for the Second Circuit, in the case of United States vs. 52 Drums of Maple Syrup, 110 Fed. (2d) 914, which involved syrup transported as a raw material not to be sold or otherwise used until it had been processed, held that evidence offered by the claimant that all excesses of poisonous matter which had gotten into the raw syrup would have been removed by the claimant before the same was sold or otherwise disposed of and its intention so to do presented a wholly false issue; that:

> "The intended use to which adulterated food is to be put after it has been shipped in interstate commerce is immaterial on the question of the Government's right to forfeit because of such shipment."

Citing:

Hippolite Egg Company vs. United States, 220 U. S. 45.

The Federal Food, Drug and Cosmetic Act has also been construed by many Courts, and insofar as we are advised by all Courts considering the subject as prohibiting the interstate shipment of food which consists in whole or in part of any filthy, putrid or decomposed substance, irrespective of whether it was injurious to health.

See:

United States vs. 1851 Cartons Frozen Whiting, CCA Tenth Circuit, 146 Fed. (2d) 760.

Andersen vs. United States CCA Ninth Circuit, 284 Fed. 542.

United States vs. 200 Cases Adulterated Tomato Ketchup, 211 Fed. 780.

United States vs. Krumm, 269 Fed. 848.

United States vs. 200 Cases, more or less, Canned Salmon, 289 Fed. 157.

The District Judge evidently had in mind the desirability of determining whether or not the packing stock butter in question here was such as might be processed into food suitable for human consumption when he entered the order of October 4th, 1943, Record Page 40, which provided that the material be processed at the expense of the claimant, the taking of samples before and after such processing, and the retention of jurisdiction, custody and possession of the subject matter to the same extent as if the order had not been made. However, the Government was not satisfied with this order and applied to the Circuit Court of Appeals for the Fifth Circuit for a mandamus to vacate the same.

The majority opinion (Waller, Circuit Judge, dissenting) held that as the libels were filed under the Federal Food, Drug and Cosmetic Act, there was no authority in law for processing or removal of impurities until after an order of condemnation had been rendered, the cost paid, bond executed, as provided by Section 334 (d) of the Act. See In Re: United States, 140 Fed. (2d) 19.

The Circuit Court of Appeals states in its opinion in the present case:

> "What was intended by the Renovated Butter Act, and all that was intended, was that renovated butter could be made out of stock, which, while not in its then state fit for human consumption, was yet not so unfit as to require its condemnation."

Conceding for the sake of argument only that this is a correct interpretation of the Act, under the standards of the Federal Food, Drug and Cosmetic Act, as construed by the Courts, there is no middle ground and that Act, if applicable, would condemn the raw material as above described by the court; and even if it were contaminated by the slightest foreign substance; and even if it was conceded

as in the Maple Syrup Case that all impurities could be removed.

Under the Renovated Butter Act, Section 2325, the duty of inspecting the raw material entering into process or renovated butter is upon the Secretary of Agriculture and it is his province to determine whether or not such material will be deleterious to health or unwholesome in the finished product. In case such deleterious or unwholesome materials are found to be used in the product intended for interstate shipment he has power to confiscate the same.

In addition to the right and the duty of the Secretary of Agriculture to confiscate the finished product, if unwholesome or deleterious to health; we concede and nobody questions the right of the Administrator under the Food, Drug and Cosmetic Act, to seize any process or renovated butter offered for sale in interstate commerce if not measuring up to the standards of that law or which is not fit for food.

The Court can readily see the situation of a manufacturer of process butter—a salvage process. His source of supply is beyond his control. It comes from the small farmers in the Southeastern States. It is well known that dairy products are peculiarly subject to contamination. The Renovated Butter Act was adopted to protect the public in the *finished product*—the only thing offered for sale. The Secretary of Agriculture has adopted the most exacting regulations, which are set out in the Appendix to the Petition for Certiorari.

If every lot of packing stock butter sought to be renovated which is not fit for food in its then condition must be seized and condemned; the Court costs paid, bond given and the processing operation conducted under the surveillance and at the convenience of a representative of the Administrator whose expense must be paid by the manufacturer, as required by the Food, Drug and Cosmetic Act,

USCA, Title 21, Section 334 (d), before the material can be used, as the two opinions of the Circuit Court of Appeals in effect, hold; the practical result will be that the process butter industry is outlawed.

The opinion of the court below seems to have been largely influenced by a statement in the majority opinion in the case of *Cloverleaf vs. Patterson, supra,* where the Court says:

> "Further, we agree with respondent's contention that there is no authority to confiscate or destroy material under the Renovated Butter Act. It should be noted that packing stock butter, adulterated under the definitions of Section 402 of the Federal Food, Drug and Cosmetic Act, 52 Statute, 1046, when introduced into or while in interstate commerce, may be confiscated under Section 304 while in interstate commerce or at any time thereafter.
>
> Cf: United States vs. 9 Barrels of Butter, 241 Fed. 99, Page 1631."

It is significant that the Court suggested that the facts in the 9 Barrels of Butter case be compared with those of the case then at bar.

As we understand it, the Court did not regard packing stock butter held by the manufacturer for processing in the regular course of business to constitute "Food" under the definitions of the Pure Food and Drug Act; but if so, the Special Renovated Butter Act made it an exception to that law, when applicable.

Whatever the above quotation from the majority opinion in the Patterson case supra intended, that case was not within the *focus* of the case being then considered by and which was immediately before the Supreme Court; and the expression should not be regarded as settling that matter, which is the prime question raised in the present case by this Petition.

Section 401 of the Food, Drug and Cosmetic Act of June

11, 1938, as codified in U. S. C. A. Title 21, Sec. 341, provides that:

> "No definition and standard of identity and standard of quality shall be established for * * * butter * * *"

Butter is specifically defined in the Renovated Butter Act, I.R.C. Sec. 2320, Subsection A, which is as follows:

> "Butter—For the purpose of this chapter and Sec. 3206 and 3207, the word "butter" shall be understood to mean the food product usually known as butter which is made exclusively with milk and cream and with or without common salt and with no coloring."

The same Act, in Subsection C, defines Process or Renovated Butter as follows:

> "Process Butter or Renovated Butter is defined to mean butter which is subjected to any process by which it is melted, clarified and refined, and made to resemble butter; always excepting "adulterative butter" as defined by subsection (b) ."

The 9 Barrels of Butter case referred to in the majority opinion in the Patterson case, supra, is completely distinguished by the facts on which the opinion in the 9 Barrels case is based. If adulterated butter is shipped interstate, *unless intended for renovation,* it could be libeled under the Federal Food and Drug Act. In support of that statement the court cited the case of U. S. vs. 9 Barrels Butter, 241 Fed. 499.

A careful distinction must be drawn as to the *facts* in that case and in a case where the butter was shipped in interstate commerce solely for renovation. In the Nine Barrl case the butter involved was shipped in interstate commerce for *LADLING*. Therefore, it was subject to the

full and complete control and action of the Federal Pure Food Law. Federal Judge Hand stated that he had authority to condemn the butter, or in his discretion he could order it renovated. He ordered it renovated. If, on the other hand, that same butter had been shipped to a licensed manufacturer of renovated butter, the same judge and the same court would have held undoubtedly that it was a matter for the Secretary of Agriculture under the Renovated Butter Act. The distinction intended by the Court is that adulterated butter *not intended for renovation* is subject to the Federal Food, Drug and Cosmetic Act; adulterated butter intended for renovation is not subject to the Food and Drug Act, but is under the *exclusive jurisdiction of the Renovated Butter Act.*

In one circumstance it can be acted upon by the Pure Food Law of the Federal Government and is subject to libel, and condemnation; in the other circumstance it is subject to the exclusive jurisdiction of the Secretary of Agriculture under the Renovated Butter Act. Therefore, the dictum of the Supreme Court in the Patterson case, supra, is sound law; and not in anywise in conflict with the decision in that case. It was intended to show that in any event adulterated butter shipped in interstate commerce will either be condemned under the Pure Food Law, or it will be purified, cleansed, refined and rendered safe for use under the supervision of the Secretary of Agriculture as provided in the Renovated Butter Act.

Certainly Congress did not make it a race between the Administrator under the Food, Drug and Cosmetic Act and the Secretary of Agriculture as to which should exercise authority in a given case; that authority fell to the one or to the other branch of the Federal Government, as the case might be; both intended to protect the public against impure food. If the Food and Drug authorities have power to condemn packing stock butter shipped in interstate com-

merce solely for renovation, then the power of the Secretary of Agriculture to inspect the raw materials and watch and supervise the processing from beginning to end, would be nullified and rendered impotent. The U. S. Supreme Court has held exactly to the contrary; in the case of Cloverleaf Butter Company, supra, the Court said:

> "Congress hardly intended the intrusion of another authority during the very preparation of a commodity subject to the continuous surveillance and comprehensive specifications of the Department of Agriculture."

The Renovated Butter Act confers upon the Secretary of Agriculture authority over the raw material as disclosed by Section 2325 by the following language:

> "a rigid sanitary inspection of all factories and storehouses where renovated butter is manufactured, packed or prepared for market, and of the products thereof and materials going into the manufacture of same."

It is true that Congress did not give him authority to condemn the "*materials*" before being subjected to the manufacturing processes, but he can segregate it, and cause it to be renovated under his scrutiny, and if the finished product is found to be deleterious or unwholesome, he can confiscate it. That authority is unquestioned and there is no doubt as to what Congress meant to say or did say.

But the standard by which he was to judge the FITNESS was whether it could be MADE FIT by processing. If Congress did not intend for the Secretary of Agriculture to have this power, it would not have mentioned the raw material, but its language would have been confined to the finished product.

Should the will of Congress be frustrated by attempting to hold that some other law governs? Is that the way to

remedy a defect or weakness in the law if it were conceded that it was weakness? No. The remedy is to amend the Renovated Butter Act. Congress can an will amend the law if it deems it necessary. It is not the duty of the Courts to correct such defects if such exist. The remedy is with the law making body or Congress.

The Supreme Court of the United States in the case of Cloverleaf Butter Company vs. Patterson, 315 U. S. 148, said:

> "Whether the sanction used to enforce the regulation is condemnation of the material or the product is not significant. Since there was Federal regulation of the materials and composition of the manufactured article, there could not be similar state regulation of the same subject."

It cannot be contended that because the Act did not give the Secretary of Agriculture power or authority to condemn the "materials" before renovation it left that field open; and the Federal Security Administrator can seize such materials, in interstate commerce and condemn same. Although Congress specifically directs the Secretary of Agriculture to inspect the materials he cannot do so because the Federal Security Administrator has taken them beforehand by libel. Thus the power of the Secretary of Agriculture to inspect them as directed is completely frustrated and denied.

Congress provides that if the Secretary of Agriculture finds that an unwholesome material is used it is his duty to seize the finished product unless it has been rendered pure and wholesome. The purity and *wholesomeness of the finished product* was the criterion by which he was to measure the fitness of the raw material. If that is the law, and that was the will of Congress, the Courts should not by judicial decree create a different standard. There is a

remedy, and that remedy is the power of Congress to amend its laws if it deems it necessary. The Renovated Butter Act gives the Secretary of Agriculture full and ample authority to enforce the "standard" set up by the Act. Congress had the right to prescribe that standard, and it is simple and clear that it intended the Secretary should have full control of the raw materials and states what his duty was in case such materials were used.

There is sound reason why Congress imposed full authority upon the Secretary of Agriculture. It gave him discretion as to whether he would sanction the use or non-use of the "materials" and if in his judgment or discretion such "materials" were *unfit* he could follow them through the manufacturing processes, take samples at different stages of the way, examine the finished product, and if he found any of the objectionable matter therein, or that it was unwholesome, he could confiscate them.

The Federal Food, Drug and Cosmetic Act gives no such authority to its agents or any discretion over the raw materials to be used. If there is the slightest adulteration found in the raw material, of any kind, it is their duty to seize the materials. They cannot say to the manufacturer that you can use this or that part. One fly in a can makes the whole can unfit for use; too much moisture, or any foreign matter even if wholly innocuous, makes it adulterated. When they take samples they do not sample the butter, but *they take samples of the foreign matter.* So one fly or one bug would be a sample of the can or condition of the butter; and as construed would subject the entire contents to seizure and condemnation.

Such a rule would close the doors of every Renovated Butter Factory in the country. Such procedure under the Food, Drug and Cosmetic Act would deprive every farmer in the country of a market for his surplus farm butter. Congress did not intend that this should be done.

As said by the Supreme Court in the case of Cloverleaf Butter Company vs. Patterson, supra:

> "The manufacture and distribution in interstate and foreign commerce of process butter is a substantial industry which, because of its multi-state activity, cannot be effectively regulated by isolated competing states."
>
> "Its wholesome and successful functioning touches farm producers and city consumers. Science made possible the utilization of large quantities of packing stock butter *which fell below the standards of public demand* (Italics Ours), *and Congress undertook to regulate the production in order that the resulting commodity might be free of ingredients deleterious to health.*"

Thus our highest Court after an exhaustive study and great research into the entire question says that Congress intended that if the raw material did have deleterious matter in it which could be removed by scientific methods now used, the resulting product would be fit for use and could be sold. In other words, matter contained therein would not render it unfit for use as raw material for renovating under the Renovated Butter Act.

POINT B.

The Circuit Court of Appeals for the Fifth Circuit below has decided a Federal case in probable conflict with the applicable decisions of this Court with reference to the construction of statutes as declared in many cases.

PROPOSITION I.

"All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice or oppression or an absurd consequence. It will always therefore, be presumed that the Legislature intended exception to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter.

U. S. vs. Kirby, 7 Wall, 482, 19 L. Ed. 278.
Sorrells vs. U. S., 287 U.S. 435, 447; 53 Sup. Ct. Rep. 211, 214.

Where the literal construction of an Act would cause results that would not be within the Legislative intent, it cannot be deemed to accomplish its purpose. Unreasonable, absurd, or ridiculous consequences should be avoided.

50 Am. Jur., Page 385, Sec. 377.

PROPOSITION II.

"According to the well settled rule that general and specific provisions, in apparent contradiction, whether in the same or different statutes and without regard to the priority of enactment, may subsist together, the specific qualifying and supplying exceptions to the general."

Townsend vs. Little, 109 U. S., 504; 27 L. Ed., Page 1012.

"A thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers."

Leavenworth L. & G. R.R. Co. vs. U. S., 92 U.S. 733; 23 L. Ed. 634.

"In the enactment of a statute, the earlier Acts on the same subject are generally presumed to have been in the knowledge and view of the Legislature, which is regarded as having adopted the new statute in the light thereof and with reference thereto, therefore, in the construction of the statute, reference may be made to earlier statutes on the subject, which are regarded as in par materia with the later statute."

50 Amer. Jur., Page 354, Sec. 354.

"It is a canon of statutory construction that a later statute, general in its terms and not expressly repealing a prior special statute, will ordinarily not affect the special provisions of such earlier statute. In other words, where there are two statutes, the earlier special and the later general,—the terms of the general broad enough to include the matter provided for in the special,—the fact that the one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, and the general will not be understood as repealing the special, unless a repeal is expressly named, or unless the provisions of the general are manifestly inconsistent with those of the special."

Rogers vs. U. S., 185 U.S. 83, 88; 46 L. Ed. 816, 818.
(The Rogers Case, supra, is a brief in our behalf.)

Ex Parte Crow Dog, 109 U.S. 556.

Consistency in statutes is of prime importance, and in the absence of a showing to the contrary, all laws are presumed to be consistent with each other. Where it is possible to do so, it is the duty of the Courts in construction of the statutes to harmonize and reconcile laws and to adopt that construction of a statutory provision which harmonizes and reconciles it with other statutory provsiions."

50 Amer. Jur., Page 367, Sec. 363.

ARGUMENT

As before pointed out, the Circuit Court of Appeals recognizes the fact that all packing stock butter comes into the plant more or less adulterated with extraneous and deleterious substances, or otherwise unfit in its then condition for human food; and that if all packing stock butter were to be condemned because not fit for human food, no matter how slight the adulteration, the Butter Renovating Industry could not survive.

However, the Court held that raw material—packing stock butter—held solely by the Petitioner for processing under the Renovated Butter Act and Regulations, which did not meet the standards of the Federal Food, Drug and Cosmetic Act, was subject to condemnation and in effect held that the wholesomeness of the finished product was not the test.

We might agree with the statement in its opinion:

> "Implied repeal or limitation of one Act by another is never favored. It is not for the Courts, unless the conflict between the two Acts is inescapable and compelling, to exclude from the coverage of an Act matters which it terms expressly include, on the theory that another Act, whose general purpose seems inconsistent has impliedly repealed or limited the Act under review."

But we respectfully submit that the Circuit Court of Appeals not only failed to take into consideration the fact that the Renovated Butter Act as adopted in 1902, amended in 1912, and re-enacted in 1939, is a special act governing the Renovated Butter Industry and that the Court below misapplied the canons of construction.

We submit that whether or not the re-enactment of the Renovated Butter Act in 1939, one year after the adoption of the Federal Food, Drug and Cosmetic Act, is important and controlling; it certainly would show, according to the canons and rules of statutory construction, that the special Renovated Butter Act was recognized by Congress as in effect and intended to cover the field of that industry, and constituted a special exception to the general provisions of the Federal Food, Drug and Cosmetic Act.

CONCLUSION

The Congress was fully aware of the necessity for the special law known as the Renovated Butter Act, adopted in 1902; after the most thorough and complete investigation and the hearing of testimony was had before the Committee, and full discussion on the Floor, in regard to the bill, its provisions; it purposes and intent. The Act was recognized by amendment, adopted in 1912; it was sought to be integrated with the Meat Inspection Laws enacted by Congress; and no conflict was ever found between the original Pure Food Law of 1906 and the Renovated Butter Act. The latter statute, with the meticulous regulations adopted and promulgated under the authority of that Act have successfully eliminated from the Renovated Butter Industry undesirable plants which could not measure up to the requirements; and for nearly half a century have controlled and regulated a successful, important and essential industry; it can hardly be said that Congress intended to repeal, limit or modify the terms of this special Act by the adoption of the General Pure Food, Drug and Cosmetic Act of 1938.

It is clear that there was no necessity for Congress to specifically except the Renovated Butter Act from the provisions of the general law. The canons of construction and all statutory provisions took care of that.

Under the conclusions of the law as set out in the opinion of the Court below, a death blow would be struck to the Renovated Butter Industry; the markets of the thousands of small farmers throughout the Southeast for their packing stock or country butter would be destroyed; the opportunity of many, many thousands of the public to buy a wholesome Renovated Butter, knowing what it is, at a price they are able to pay and less than the price of Creamery Butter, would be taken away.

The Court will take judicial knowledge of the fact that

butter is now one of the scarcest food products on the market; and, even if unrationed or if the purchaser has the available points, it can hardly be procured; there is no complaint from the consumers or from the public as to Renovated Butter and the conclusion of the Court below on this Record shows that good butter was produced by the manufacturer. The importance of the industry was recognized in the Patterson Case, supra.

Under the holding of the Court below, all packing stock or country butter intended for renovation must be first condemned under the Federal Food, Drug and Cosmetic Act; or it must be held by the Court that the industry is controlled by the special law known as the Renovated Butter Act; and that it is exclusively under the regulation, control and dominion of the Secretary of Agriculture until he has passed the finished product.

The proceedings in the instant case have not been instituted by or on motion of the Secretary of Agriculture.

It is hardly conceivable that the Congress intended to authorize the intrusion into the power and authority which Congress had delegated to the Secretary of Agriculture by another independent and separate Federal Bureau, operating under a different statute and with different standards and having a different purpose.

It is most earnestly insisted that the Writ of Certiorari should be granted, to the end that the opinion of the Circuit Court of Appeals of the Fifth Circuit below be reviewed.

All of which is respectfully submitted.

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